

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHAD RATHBONE,

Plaintiff,

v.

Case Number 05-73554

Honorable David M. Lawson

RAY SOTTILE, JEFF KEMP,
JOHN BILLS, GREG RUCH,
JASON MILLER, TODD OPPERMAN,
DAVID FOLEY, OFFICER ZIMMERMAN,
CITY OF MONROE, and COUNTY OF
MONROE,

Defendants.

**ORDER ADOPTING IN PART MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION, GRANTING MOTION
TO DISMISS, AND DISMISSING COMPLAINT**

Presently before the Court is the report issued on February 2, 2007 by Magistrate Judge Paul J. Komives pursuant to 28 U.S.C. § 636(b)(2)(B) recommending that this Court grant the defendants' motion to dismiss the plaintiff's complaint for failure to permit discovery and award the defendants reasonable costs and expenses. Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, no objections have been filed. The parties' failure to file objections to the Report and Recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Nevertheless, the Court retains the authority to weigh the propriety of the magistrate judge's recommendations, and in this instance the Court will exercise

this power, at least in part. *See* 28 U.S.C. § 636(b)(1)(C) (stating that the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate” irrespective of whether any party has filed objections to the magistrate’s Report and Recommendation); *Delgado v. Bowen*, 782 F.2d 79,82 (7th Cir. 1986).

The Court agrees with the findings and conclusions of the magistrate judge to the extent that he recommends dismissal of the action as authorized by Federal Rule of Civil Procedure 37(b)(2)(C). The magistrate judge’s report demonstrates that the plaintiff repeatedly and inexcusably ignored discovery requests from the defendants and a court order compelling those responses. The plaintiff also failed to appear for a hearing scheduled before the magistrate judge on the present motion to dismiss and has offered no justification for his neglect. To those defalcations, the Court adds the failure to object to Magistrate Judge Komives’s recommendation that the case ought to be dismissed. The plaintiff utterly has failed to attend to the business of his lawsuit.

On the other hand, the Court disagrees with the recommendation that costs and expenses should be awarded to the defendants. Although Federal Rule of Civil Procedure 37(b)(2) authorizes the imposition of costs and attorney’s fees, the Court finds that it would be unjust to grant such an award when the plaintiff already faces the ultimate sanction of dismissal. *See Beil v. Lakewood Engineering & Manufacturing Co.*, 15 F.3d 546, 551-52 (6th Cir. 1994) (describing dismissal as “the sanction of last resort”).

Accordingly, it is **ORDERED** that the Magistrate Judge’s Report and Recommendation [dkt # 46] is **ADOPTED IN PART**, and the motion to dismiss for failure to permit discovery [dkt # 41] is **GRANTED**.

It is further **ORDERED** that the complaint is **DISMISSED WITH PREJUDICE**.

s/David M. Lawson

DAVID M. LAWSON

United States District Judge

Dated: February 22, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 22, 2007.

s/Felicia M. Moses

FELICIA M. MOSES